IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.617/2004

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 29th November, 2006

Heard Shri Dhole, learned counsel for the appellants.

2. By this appeal, the appellants take exception to the Judgment and decree dated 17.9.2004 passed in Regular Civil Appeal No. 15/04 by Additional District Judge, Washim dismissing the appeal filed by the appellants against the Judgment and decree dated 15.12.2003 passed by the Joint Civil Judge, Junior Division, Washim in Regular Civil Suit No. 143/01. Muffizoddin Mohd. Kutuboddin filed the above referred suit against the respondent seeking relief of injunction and declaration that the sale-deed dated 17.10.1989 executed by him in favour of the defendant be declared null and void. Sudam Nathuji Survey, the defendant in the above referred suit filed Regular Civil Suit No. 157/2001 against Mufizoddin Mohd. Kutuboddin for grant of permanent injunction in respect of the suit property. The trial Court by common Judgment dismissed the suit filed by Muffizoddin

Kutuboddin and decreed the suit filed by Sudam Surve respondent herein. Against the common Judgment passed by the trial court two appeals were preferred and the lower appellate Court by common Judgment dated 17.9.2004 dismissed both the appeals upholding the findings given by the trial court. The present appeal has been filed by the legal representatives of Muffizoddin Kutuboddin.

Mr. Dhole, the learned counsel appearing for the appellants submitted that the findings given by both the courts below are perverse and, therefore, interference is called for. He fairly submitted that the Second Appeal No. 634/2004 filed by the appellants against the decree passed by the lower appellate court arising out of the suit filed by the respondent herein has been dismissed by this Court.

Having considered the submission made by the learned counsel and having perused the Judgments passed by both the courts below, I do not find any merit in the present appeal. Firstly since the second appeal filed by the appellants against the decree passed by the lower appellate court confirming the decree passed by the trial court granting injunction against the appellants has been dismissed and as such has become final. There is no question of passing contrary decree against the

respondent. On this count only this appeal deserves to be dismissed. However, perusal of the impugned Judgment discloses that the findings given by both the courts below are based upon evidence on record and as such cannot be said to be perverse to warrant interference in second appeal. No substantial question of law is involved in the above appeal. Therefore, the second appeal is summarily rejected.

C.A. No.7766/04

In view of the dismissal of the appeal nothing survives in this application. Hence, the same is dismissed as infructuous.

Judge

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